

## IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0354

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DANNY SARTAIN,

Defendant and Appellant.

FILED

FEB - 4 2010

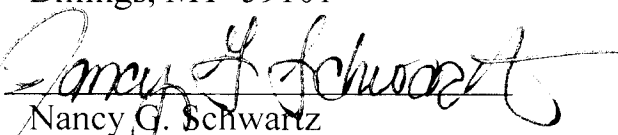
*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA**MOTION FOR EXTENSION OF TIME  
AND AFFIDAVIT IN SUPPORT**

COMES NOW, Nancy G. Schwartz, counsel of record for Defendant and Appellant, and respectfully requests an extension of time until March 5, 2010, in which to prepare, file and serve Appellant's opening brief in the above-entitled matter. In support of this motion, undersigned counsel respectfully submits the following affidavit.

Respectfully submitted this 3<sup>rd</sup> day of February, 2010.

N.G. SCHWARTZ LAW, PLLC  
303 North Broadway, Ste. 600  
Billings, MT 59101

By:

  
Nancy G. Schwartz  
Attorney for Defendant/Appellant

STATE OF MONTANA            )  
  : ss  
County of Yellowstone        )

I, Nancy G. Schwartz, being first duly sworn upon my oath, depose and state as follows:

1. I am a licensed, practicing attorney in the State of Montana, and am assigned cases as contract counsel by the Office of the State Public Defender, Appellate Defender Office.

2. In this capacity, I was assigned to represent the Appellant in the above-entitled matter and a Notice of Appearance was filed on my behalf on October 1, 2009.

3. The issues presented on appeal in Mr. Sartain's case are complex. Mr. Sartain was convicted following a two day jury trial, and Mr. Sartain has provided the undersigned and his previous counsel with numerous issues to research and consider prior to filing an opening brief.

4. This is my fourth request for extension. Prior to my appointment to represent Mr. Sartain, appellant's counsel requested and was granted at least two prior extensions. The brief is presently due on February 5, 2010.

5. I cannot meet the present deadline for filing Appellant's opening brief. I have recently completed briefing in DA 09-0252 and DA 09-0333

and will not be able to complete the brief in the present matter by the February 5, 2010 due date.

6. Mr. Sartain is presently incarcerated following his conviction in this matter.

7. I will continue to work diligently to complete the opening brief within the time requested.

8. Opposing counsel has been contacted concerning this motion and does not object.

9. Further your affiant sayeth naught.

SUBSCRIBED AND SWORN to before me this 3<sup>rd</sup> day of February, 2010.



\_\_\_\_\_  
**THERESA ROLL**  
\_\_\_\_\_

Notary Public for the State of Montana  
Residing at Billings, MT  
My commission expires: 02/28/2011

CERTIFICATE OF SERVICE

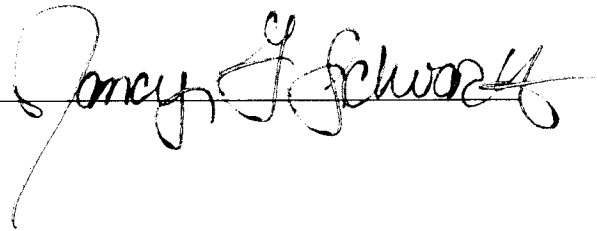
I hereby certify that I caused a true and accurate copy of the foregoing  
Motion for Extension of Time and Affidavit in Support to be mailed to:

STEVE BULLOCK  
Montana Attorney General  
MARK MATTIOLI  
Assistant Attorney General  
P.O. Box 59620-1401  
Helena, MT 59620

MARTY LAMBERT  
GALLATIN COUNTY ATTORNEY  
1709 W. COLLEGE  
BOZEMAN, MT 59715

DANNY SARTAIN 2009296  
MONTANA STATE PRISON  
700 CONLEY LAKE  
DEER LODGE, MT 59722

Dated: Feb 3 2010

A handwritten signature in black ink, appearing to read "Jancy I. Schwarz", written over a horizontal line.